

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2127 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

HIRABEN SHANKERLAL PATEL

Versus

STATE OF GUJARAT

Appearance:

MR JAYANT PATEL for Petitioner

MR TUSHAR MEHTA for Respondent No. 3

MRS HARSHA DEVANI, AGP FOR RESPONDENTS NO.1, 2 & 4

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 17/08/96

ORAL JUDGEMENT

1. By way of this Special Civil Application under Article 226 and 227 of the Constitution of India, the petitioner has challenged the order dated August 09, 1994 passed by the Deputy Secretary (Appeals) Agriculture Cooperation and Rural Development, upholding the order dated May 25, 1994 passed by the Joint Director (Textiles), Cottage and Rural Industries, Gujarat State, Gandhinagar, and the order of Liquidator dated 25.01.1992.

2. The brief facts leading to the present Special Civil Application are that one Mahila Gruh Udhog Sahakari Mandali Ltd (hereinafter referred as "the Society") was registered under the provisions of the Gujarat Coperative Societies Act (hereinafter referred to as "the Act") in the year 1985 for an object inter alia to undertake the activities of dealing in and manufacturing of and/or providing job work facilities to the females for manufacturing of various edible items like papad, khakhra etc and other items of brown papers and plasticbags, ready-made clothes etc. All the members of the Society are female members. The petitioner is one of the share holder and she was elected as President of the Society alongwith other office bearers in the year 1988. The Society, in order to achieve the object, installed machineries for manufacturing paper bags. For the purpose of installation of the machineries, the Society had to obtain the loan from the District Industries Center. At the time when the petitioner took over as the President of the Society, the factory was not working. On account of an accident, the main machine for manufacturing paper bag was damaged. The financial condition of the Society detoriated on account of accident. Because of the poor financial condition of the Society, it was wound up as per the order dated January 02, 1991 passed by the District Registrar, Cooperative Societies. The respondent No.3 was appointed as the liquidator of the Society. The say of the petitioner is that the respondent No.3 took the charge of all the properties of the Society except of the machine of paper bag, inspite of the fact that she offered to handover. The liquidator refused to accept the same on the ground that the machine was in damaged condition and out of order. On the one hand, the liquidator did not take possession of the machine and on the other hand, he issued a notice dated 23.11.1991 informing the petitioner that dead stock of the machinery worth Rs 25,242/- has not been handed over by her and as such, if the possession is not given, she will be liable to pay the interest at the rate of 18% per annum recoverable from the Society as per the procedure provided under section 110 of the Act. The petitioner replied to the said notice, stating inter alia that the liquidator on his own has not taken possession of the said machine. She also submittted that the machine is lying in the building and the key of the building was with the liquidator and therefore, the question of taking the possession thereof does not arise. The liquidator by order dated 25.01.1992 ordered for recovery of the amount of Rs 69,686/with interest at the rate of 10% per annum w.e.f. 17.1.1991. The District

Registrar, Mehsana was also requested to issue a Recovery Certificate against the petitioner and further, the Special Recovery Officer, Mehsana was asked to recover the amount from the petitioner. The petitioner thereafter received a notice dated 24.12.1992 from the Special Recovery Officer under section 152 of the Bombay Land Revenue Code, calling upon the petitioner to make payment of Rs 56,242/- together with interest. The petitioner received another notice dated 09.08.1993 from the Special Recovery Officer. The petitioner ultimately preferred an appeal before the District Registrar, Cooperative Societies, who initially granted the stay, but the same was subsequently vacated, on the ground that he has no power to entertain the appeal and the remedy to the petitioner was available under section 153 of the Act. The petitioner thereafter preferred an appeal under the provisions of section 153 of the Act to the Joint Director (Textiles), Cottage and Village Industries, Gujarat State, which was rejected by the order dated May 25, 1994. Against the said order, the petitioner preferred a revision before the State Government, which was also rejected by the order dated August 09, 1994.

3. It is contended by Mr Jayant Patel, learned counsel for the petitioner that the order of the liquidator in purported exercise of the powers under section 110(h) of the Act of 1961 to recover a sum of Rs.69,686/- is ex facie illegal as, the said provision does not give power to the liquidator to fix the liability of the members or the past members in respect to the contribution to the assets of the Society. He further submits that such a power is vested with the Registrar, Cooperative Societies under section 93 of the Act. In the instant case, no inquiry under section 93 of the Act has been held. It is also submitted that the Registrar has proceeded on the promises of incorrect fact that, inspite of the repeated letters, the charge was not handed over by the President of the Society. He further submits that, for the first time, before the Joint Director (Textiles), a reference was made to the letter dated August 22, 1991, which was a non-existing documents. On the other hand, Mr Tushar Mehta, learned counsel for the respondents submits that the moment the liquidator is appointed, the entire property of the Society is vested in him in view of the provisions of section 108 (5) of the Act. He further submits that the word used 'contribution' under section 110(h) of the Act cannot be narrowly construed as simply a share contribution. On the facts of the case, he submitted that the order of recovery is perfectly justified as the liability has been confessed by the petitioner.

4. In order to appreciate the contentions of the parties, it will be desirable to understand the mechanism as provided under sections 93 and section 110(h) of the Act of 1961. The provisions are complex and as such, it would be convenient to dissect them, thus -

Section - 93 :

1. WHERE in the course of or as a result of -

- (a) audit under section 84, or
- (b) enquiry under section 86, or
- (c) inspection under section 87, or
- (d) winding up of a Society.

2. The Registrar is satisfied on the basis of the

(a) report made by the auditor, or

(b) report of the person authorised to
inspect the books under section 87,
or

(c) report of the liquidator under
section-110.

3. That any person who has taken part in the organisation or management of the society, or any deceased or past or present officer of the society,

4. Has within a period of five years prior to date of such audit, inquiry, inspection or order for winding up.

5. Misapplied, retained or become liable or accountable for,

- (a) any property of the society, or
- (b) has been guilty of misfeasance, or
- (c) breach of trust in relation to the society.

6. The Registrar or a person authorised by him in that behalf may investigate the conduct of such person -

(a) after framing charge against such

person or persons,

and (b) after giving a reasonable
opportunity to the person
concerned,

and (c) in case of deceased person to his
representative who inherit his
estate.

7. Make and order to :

- (a) repay, or
- (b) restore the money, or property or any
part thereof, or
- (c) with interest at such rate as the
Registrar or the person authorised under
this section may determine, or
- (d) to contribute such sum to the assets of
the society by way of compensation in
regard to the -
misapplication, retention, misfeasance,
or breach of trust, as he may determine.

Section 110 provides the powers of the liquidator
which he may exercise, subject to the rules and general
supervision, control and direction of the Registrar.
Sub-clause (h) empowers the liquidator to determine the
contribution of the persons concerned to the assets of
the Society, which reads as under :

Section-110 :

110. The Liquidator appointed under section 108 shall
have power, subject to the rules and the general
supervision, control and direction of the
Registrar, -

- (a).....
- (b).....
- (c).....
- (d).....
- (e).....
- (f).....
- (h) to determine, from time to time, after
giving an opportunity to answer the
claim, the contribution to be made or
remaining to be made by the members or
past members or by the estate, nominees,
heirs or legal representatives of

deceased members, or by any officer, past officer or the estate or nominees, heirs or legal representatives of a deceased officer to the assets of the society, such contribution being inclusive of debts due from such members or officers;

(i).....

(j).....

5. On analysis of section 93 and section 110(h), it appears that the liquidator in the process of effective implementation and working of winding up proceedings determine contribution to be made to the assets of the society by the Members or Officers, past or present, or in case of death, their legal Representatives. The word used 'contribution' is not to be construed in narrow sense to mean simply share contribution. It also includes debts due from members. The phrase 'contribution to the assets of the society' refers to liability of the members of the society to contribute to its assets in the event of winding up of the society. Before making order of contribution against a person, the liquidator is required to give him opportunity to answer the claim. However, section-110 does not empower the liquidator to investigate the conduct of the Members or Officials past or present, holding him liable or accountable for any property of the society. If on inquiry under section 110(h), the liquidator finds ascertainable contribution, he may call upon the delinquent or his/her legal representative to pay the same, but if he finds that it requires detail investigation with respect to conduct of the person, he must submit report to the Registrar. If on perusal of the report, the Registrar is prima facie satisfied that liability has arisen against any person who has taken any part in the organisation or management of the society and such a person is liable or accountable for any money or property of the society on account of misapplication or retention or on account of misfeasance or breach of trust in relation to the society, he has been guilty, the Registrar or person authorised by him may investigate the conduct of such persons. Misfeasance covers every misconducts which includes negligence as well, causing pecuniary loss to the society, so also breach of trust, resulting in a loss to the society. The loss to the society being in the nature of damages, computable in terms of money, resulting into an order of repayment or restoration of money or property with interest from a person, leads to serious consequences. Thus, the provision provides for framing of charge against the

delinquent and giving him of reasonable opportunity of hearing. The mechanism, therefore, emerges from the reading of section 93 and 110(h) that, in case of a society in liquidation or winding up, Registrar is vested with power to assess damages against delinquent, promoter etc by way of summary enquiry which includes, a preliminary enquiry under section 110(h), satisfaction of the Registrar, notice, filing of written statement, framing of charges, recording of evidence and hearing of arguments.

6. In the instant case, considering the stand of the petitioner that the accident had taken place in which the machinery was damaged and further the fact that there is serious dispute with respect to the very existence of letter dated 22.08.1991, the demand of Rs.60,686/- with interest cannot be said to be ascertainable due. The matter therefore requires detailed investigation. In view of this, impugned order of liquidator dated 21.01.1992 without proper enquiry under section 93 is ex-facie illegal and deserves to be set aside.

7. In view of the aforesaid, this Special Civil Application is allowed. The order of the liquidator dated 25.01.1992 and subsequent orders passed by the Joint Director (Textiles) dated May 25, 1994 and the order dated August 09, 1994 passed by the Deputy Secretary (Appeals), Agriculture Cooperation are set aside. It will be open for the liquidator to proceed with the matter from the stage of notice dated 23.11.1991. Though the say of the petitioner is that he has filed a reply to the said notice, but it will be open for the petitioner to file a fresh reply to the said notice. If the liquidator intends to proceed with the matter, he will give a notice to the petitioner specifying the time period in which the petitioner has to file a reply and will proceed in the manner provided in section 110(h) and section 93 of the Act, as explained in this judgment. It is made clear that this order is made without prejudice to the rights and contentions of the parties with respect to other aspects of the case. Rule made absolute to the aforesaid extent.

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